

This section applied to a misnomer of an individual defendant. *Union Bank v. Tillard*, 26 Md. 452; *Abromatis v. Amos*, 127 Md. 404.

Prior to the act of 1880, ch. 135, a misnomer of the plaintiff could not be cured by amendment. *Thanhauser v. Savins*, 44 Md. 414.

An. Code, sec. 38. 1904, sec. 38. 1888, sec. 37. 1856, ch. 112, sec. 27.

42. If there be a non-joinder or misjoinder of plaintiffs, the court may allow an amendment by which a plaintiff may be added or stricken out, as the case may require.

The allowance of an amendment is confided to discretion of trial court, provided it be within power of court to make it. *Thillman v. Neal*, 88 Md. 529.

This and two following sections do not affect rule that where a debt is due to a partnership or to several individuals jointly, they must all join as plaintiffs, and if they fail to do so, the objection may be raised to the proof (on ground of a variance), under general issue. *Smith v. Crichton*, 33 Md. 107. And see *Kent v. Holliday*, 17 Md. 387.

Where a suit is brought by H. S., "next friend" of J. S., declaration may be amended so as to make H. S. and J. S. joint plaintiffs without amending writ. *Condon v. Sprigg*, 78 Md. 333.

This section referred to in construing sec. 45—see notes thereto. *Wright v. Gilbert*, 51 Md. 153.

See notes to secs. 39 and 41.

An. Code, sec. 39. 1904, sec. 39. 1888, sec. 38. 1856, ch. 112, sec. 30.

43. If there be a misjoinder or non-joinder of defendants, the court may allow a defendant to be stricken out or added, as the case may require; but if a new defendant be added, he shall be summoned and have the same time to plead as if a new action were brought against him.

Under this and the following section, plaintiff is entitled in an action of replevin, to strike out a misjoined defendant. *Herzberg v. Sachse*, 60 Md. 434.

An amendment of affidavit before a notary, and warrant of justice to the clerk, in attachment cases, are not within purview of this section. (See art. 9, sec. 28.) *Halley v. Jackson*, 48 Md. 260.

This section referred to in overruling a motion in arrest of judgment. *Vernon v. Tucker*, 30 Md. 463.

See notes to secs. 39, 41 and 42.

An. Code, sec. 40. 1904, sec. 40. 1888, sec. 39. 1856, ch. 112, secs. 26-30.

44. Amendments for misjoinder or non-joinder of either plaintiffs or defendants may be made at any time before the jury retire to make up their verdict, or before judgment given on demurrer, or other trials before the court, as the case may be; and the court may grant such continuances and may award such costs against the party making the amendment as may be deemed just and reasonable.

As to costs, see also sec. 49.

See notes to secs. 39, 41, 42, 43 and 48.

An. Code, sec. 41. 1904, sec. 41. 1888, sec. 40. 1856, ch. 112, secs. 26-30.

45. In amendments for non-joinder or misjoinder entire new parties, either plaintiffs or defendants, can not be introduced, but some one of the original plaintiffs and some one of the original defendants must remain parties to the action; and in no case of amendment can entire new parties, either plaintiffs or defendants, be made.

Where caption of a petition appealing from award of commissioners for opening streets in a condemnation case is "A. by B. Next Friend v. The Mayor," etc., and the name of petitioner as stated in petition is "B.", and affidavit to petition is made